

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 748

Filing Requirements for Suspicious Activity Reports

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking (NPR).

SUMMARY: The proposed rule describes in greater detail the requirements for reporting and filing a Suspicious Activity Report (SAR) and addresses prompt notification of the board of directors of SAR filings, the confidentiality of reports, and liability protection. NCUA also proposes to change the heading for this part so it more accurately describes its scope. While retaining cross-references in the rule to the SAR form and instructions, these changes will enhance credit union compliance by providing greater detail in the rule on the thresholds and procedures for filing a SAR.

DATES: Comments must be received on or before August 28, 2006.

ADDRESSES: You may submit comments by any of the following methods

(Please send comments by one method only):

- NCUA Web Site:
http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html. Follow the instructions for submitting comments.
- E-mail: Address to regcomments@ncua.gov. Include “[Your name] Comments on Notice of Proposed Rulemaking (Suspicious Activity Report)” in the e-mail subject line.
- Fax: (703) 518-6319. Use the subject line described above for e-mail.
- Mail: Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

FOR FURTHER INFORMATION CONTACT: Linda K. Dent, Staff Attorney,
Office of General Counsel, at the above address or telephone (703) 518-6540.

SUPPLEMENTARY INFORMATION:

NCUA’s policy is to review regulations periodically to “update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.”

Interpretive Ruling and Policy Statement (IRPS) 87-2, Developing and Reviewing Government Regulations. NCUA notifies the public about the review, which is conducted on a rolling basis so that a third of its regulations are reviewed each

year. The changes in this proposed rule are the result of NCUA review under IRPS 87-2.

B. Proposed Changes

Suspicious Activity Report

The proposed rule modifies §748.1(c) by describing more clearly the reportable activity this section covers, identifying important filing procedures, and highlighting record retention requirements. The proposal includes in the rule other key aspects of the SAR process including the confidentiality of the reports, and safe harbor information, as well as, adds a provision requiring a credit union to keep its board of directors promptly informed of its SAR reporting activity.

While the changes expand the amount of information contained in the rule, they do not increase credit unions' regulatory burden. The changes are intended to provide fundamental information about the SAR process in a single location to facilitate the ability of credit unions to quickly access reporting and filing requirements. The board notification provision formalizes a common practice and, together with the other proposed changes, provides consistency with the SAR regulations established by the other Federal Financial Institutions Examination Counsel regulators. The changes are not intended to and do not eliminate the need for credit unions to review the instructions accompanying the

SAR form and the requirements of 31 C.F.R. Part 103.18, which may be necessary to ensure a report is accurately and fully completed.

Heading

NCUA proposes to revise the heading for Part 748 to read “Security Program, Report of Suspected Crimes, Suspicious Transactions, Catastrophic Acts and Bank Secrecy Act Compliance.” The amended heading aids users of NCUA Regulations by fully describing the contents of Part 748.

Request for Comment

The NCUA Board is interested in receiving comments on the proposed amendments to part 748.

REGULATORY PROCEDURES

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under \$10 million in assets). This proposed rule modifies the language of a preexisting requirement for federally-insured credit unions to file reports of suspected crimes and suspicious activity. The proposed rule, therefore, will not have a significant economic impact on a

substantial number of small credit unions and a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The Office of Management and Budget assigned 3133-0094 as the control number for NCUA's Form 2362. NCUA has determined that the proposed amendments will not increase paperwork requirements and a paperwork reduction analysis is not required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999 - Assessment of Federal Regulations and Policies on Families

NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

List of Subjects

12 CFR part 748

Credit unions, Suspicious Activity Report

By the National Credit Union Administration Board on June 22, 2006.

Mary Rupp

Secretary of the Board

For the reasons stated in the preamble, the National Credit Union Administration proposes to amend 12 CFR part 748 as set forth below:

**PART 748 – SECURITY PROGRAM, REPORT OF SUSPECTED CRIMES,
SUSPICIOUS TRANSACTIONS, CATASTROPHIC ACTS AND BANK
SECRECY ACT COMPLIANCE**

1. The authority citation for part 748 continues to read as follows:

Authority: 12 U.S.C. 1766(a) and 1786(q); 31 U.S.C. 5311.

2. Section 748.1(c) is revised to read as follows:

Sec. 748.1 Filing of reports.

* * * * *

(c) Suspicious Activity Report. A credit union must file a report of any known or suspected crime or any suspicious transaction related to money laundering activity or a violation of the Bank Secrecy Act. For the purposes of this paragraph (c) credit union means a federally-insured credit union and official means any member of the board of directors or a volunteer committee.

(1) Reportable activity. Transaction for purposes of this paragraph means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, share certificate, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected. A credit union must report any known or suspected crime or any suspicious transaction related to money laundering or other illegal activity, for example, terrorism financing, loan fraud, or embezzlement, or a violation of the Bank Secrecy Act by sending a completed suspicious activity report (SAR) to the Financial Crimes Enforcement Network (FinCEN) in the following circumstances:

(i) Insider abuse involving any amount. Whenever the credit union detects any known or suspected federal criminal violations, or pattern of criminal violations, committed or attempted against the credit union or involving a transaction or transactions conducted through the credit union, where the credit union believes it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the credit union was used to facilitate a criminal transaction, and the credit union has a substantial basis for identifying one of the credit union's officials, employees, or agents as having committed or aided in the commission of the criminal violation, regardless of the amount involved in the violation;

(ii) Transactions aggregating \$5,000 or more where a suspect can be identified. Whenever the credit union detects any known or suspected federal criminal violation, or pattern of criminal violations, committed or attempted against the credit union or involving a transaction or transactions conducted through the credit union, and involving or aggregating \$5,000 or more in funds or other assets, where the credit union believes it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the credit union was used to facilitate a criminal transaction, and the credit union has a substantial basis for identifying a possible suspect or group of suspects. If it is determined before filing this report that the identified suspect or group of suspects has used an alias, then information regarding the true identity of the suspect or group of suspects, as well as alias identifiers, such as drivers'

licenses or social security numbers, addresses and telephone numbers, must be reported;

(iii) Transactions aggregating \$25,000 or more regardless of potential suspects. Whenever the credit union detects any known or suspected federal criminal violation, or pattern of criminal violations, committed or attempted against the credit union or involving a transaction or transactions conducted through the credit union, involving or aggregating \$25,000 or more in funds or other assets, where the credit union believes it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the credit union was used to facilitate a criminal transaction, even though the credit union has no substantial basis for identifying a possible suspect or group of suspects; or

(iv) Transactions aggregating \$5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act. Any transaction conducted or attempted by, at or through the credit union and involving or aggregating \$5,000 or more in funds or other assets, if the credit union knows, suspects, or has reason to suspect:

(A) The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law;

(B) The transaction is designed to evade any regulations promulgated under the Bank Secrecy Act; or

(C) The transaction has no business or apparent lawful purpose or is not the sort of transaction in which the particular member would normally be expected to engage, and the credit union knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

(v) Exceptions. A credit union is not required to file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities, or for lost, missing, counterfeit, or stolen securities and the credit union files a report pursuant to the reporting requirements of 17 C.F.R. 240.17f-1.

(2) Filing Procedures. (i) Timing. A credit union must file a SAR with FinCEN no later than 30 calendar days from the date the suspicious activity is initially detected, unless there is no identified suspect on the date of detection. If no suspect is identified on the date of detection, a credit union may use an additional 30 calendar days to identify a suspect before filing a SAR. In no case may a credit union take more than 60 days from the date it initially detects a reportable transaction to file a SAR. In situations involving violations requiring immediate attention, such as ongoing money laundering schemes, a credit union must immediately notify, by telephone, an appropriate law enforcement authority and its supervisory authority, in addition to filing a SAR.

(ii) Content. A credit union must complete, fully and accurately, SAR form TDF 90-22.47, Suspicious Activity Report (also known as NCUA Form 2362) in

accordance with the form's instructions and 31 C.F.R. Part 103.18. A copy of the SAR form may be obtained from the credit union resources section of NCUA's website, www.ncua.gov, or the regulatory section of FinCEN's website, www.fincen.gov.

(iii) Compliance. Failure to file a SAR as required by the form's instructions and 31 C.F.R. Part 103.18 may subject the credit union, its officials, employees, and agents to the assessment of civil money penalties or other administrative actions.

(3) Retention of Records. A credit union must maintain a copy of any SAR that it files and the original or business record equivalent of all supporting documentation to the report for a period of five years from the date of the report. Supporting documentation must be identified and maintained by the credit union as such. Supporting documentation is considered a part of the filed report even though it should not be actually filed with the submitted report. A credit union must make all supporting documentation available to appropriate law enforcement authorities and its regulatory supervisory authority upon request.

(4) Notification to board of directors. (i) Generally. The management of the credit union must promptly notify its board of directors, or a committee designated by the board of directors to receive such notice, of any SAR filed.

(ii) Suspect is a director or committee member. If a credit union files a SAR and the suspect is a director or member of a committee designated by the board of directors to receive notice of SAR filings, the credit union may not notify

the suspect, pursuant to 31 U.S.C. 5318(g)(2), but must notify all directors who are not suspects.

(5) Confidentiality of reports. SARs are confidential. Any credit union, including its officials, employees, and agents, subpoenaed or otherwise requested to disclose a SAR or the information in a SAR must decline to produce the SAR or to provide any information that would disclose that a SAR was prepared or filed, citing this part, applicable law , for example, 31 US.C. 5318(g), or both, and notify NCUA of the request.

(6) Safe Harbor. Any credit union, including its officials, employees, and agents, that makes a report of suspected or known criminal violations and suspicious activities to law enforcement and financial institution supervisory authorities, including supporting documentation, are protected from liability for any disclosure in the report, or for failure to disclose the existence of the report, or both, to the full extent provided by 31 U.S.C. 5318(g)(3). This protection applies if the report is filed pursuant to this part or is filed on a voluntary basis.